

Home Health & Hospice Newsletter

September 2001



Indiana State
Department of Health

Volume 2
Issue 1

Background Criminal Check on Your Aide Candidate



There are two ways for an agency to obtain limited criminal histories from the Indiana Central Repository for criminal history information. The paper applications remain available. There are no changes in this procedure.

An additional method for applying is online. ISDH will only accept Indiana State Police Limited Criminal Histories from the Indiana Central Repository that are obtained through Access Indiana. The web site, which is administered by Access Indiana, may be accessed on the Internet at : www.IN.gov/isp/lch

In order to satisfy Indiana Code 16-27-2-4, a print out of an online search for a limited criminal history should show two items. First, it must show that the proper database was accessed. Second, the printout must show that a proper search was conducted. Accordingly, the printout should contain the correct name and birth date of the employee.

Staff & Personnel Changes

The provider is required to notify the Director, Division of Acute Care, State Department of Health in writing of changes in the positions of a Home Health Agency - Administrator/Alternate Administrator, Nursing Supervisor/Alternate Nursing Supervisor, and for a Hospice - Administrator, Medical Director and Patient Family Coordinator.

These changes must be reported in writing on provider letterhead with the name of the new employee, position of the new employee, name of employee he/she is replacing, and the effective date. The appropriate documentation must be submitted along with the letter notifying the Department of changes in personnel. Refer to the article in this newsletter regarding "Renewal of Licensure Application" for documentation that is required to be submitted to ISDH.

HHA Rule Development

Over the past 18 months, ISDH staff has worked with many organizations to revise the 1991 ISDH rules on the operation of home health agencies.

The proposed rules on home health rules were published October 1, 2001, with a public hearing held at 2:00 PM on Friday October 26, 2001. The next step in the process will be review by the ISDH Executive Board. We expect the proposed rules to become effective within four to six months.

Agencies and ISDH staff should continue to use the 1991 rules as the official interpretation of ISDH policy.

Non-Compete Statements

ISDH has observed that several home health agencies have non-compete clauses as part of the agency service agreement forms for patients. These agreements impose financial penalties for a patient who leaves the agency to follow an employee who may leave to work on their own or with another agency.

Even though this practice doesn't violate a specific home health statute or rule, the contract described may be something for which ISDH may impose a civil penalty: "conduct or practice found by the state department to be detrimental to the welfare of the patients of the home health agency".

That's IC 16-27-1-12(b)(3), and also 410 IAC 17-3-2(3). It also may violate Patient Rights. Centers for Medicaid and Medicare (CMS), Region V, have requested that ISDH survey staff report any agency that includes such contracts or statements in the liability or service agreements forms that patients must sign to receive services.

DISCLAIMER: The above information does not constitute legal advice to home health agencies. Please consult counsel to determine your specific rights and responsibilities.

Aide Registry



Since March 2000, ISDH staff has processed 480 disks from 204 agencies. ISDH staff has issued 2,350 letters to home health aides.

ISDH receives 1 to 3 disks per day and mails reports to the agencies the day the disk arrives. Paper applications were typed within 30 to 60 days. In October 2001, there are 6,613 aides registered.

We are still accepting registration applications, documentation of in-service education for year 2000, and CNA renewals.

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Frequent Regulation Questions & Answers

This information is based on the questions posed below and using current regulation as of October 3, 2001. Changes to regulation after this date may change this written response. Agency policy, procedure, and/or contracts may be stricter than that of the state and federal regulations and therefore may impose stricter standards. The agency would be obligated to follow the strictest standards that apply to their organization. Organization standards are devised differently or may have a separate license for the agency's private side patients. The questions asked by the agency's can only be answered concerning the regulations. When in doubt concerning the agency's regulations consult the agency's legal service.

May a therapist (PT, OT, and/or SLP) take verbal orders for their own discipline-related services?

Yes, a therapist may take orders for their specific discipline only. The therapist may take an order for "evaluation visit" for another therapy discipline.

Can a Therapist take Skilled Nursing orders?

No, the only order a therapist may take *for nursing* is an order for "skilled nurse evaluation". Therapist **may not** take any other type of order for any type of case (those with nursing or those without nursing). Several regulatory tags relate to this issue. The therapist does not meet the qualifications of a registered nurse in 42 CFR 484.4 and, therefore, may not assume the responsibilities of a registered nurse. In 42 CFR 484.14 (d) Standard: "Supervising physician or registered nurse" states, "The skilled nursing and other therapeutic services furnished are under the supervision and direction of a physician or a registered nurse (who preferably has at least one year of nursing experience and is a public health nurse)". This language addresses the registered nurse supervising other disciplines, such as therapeutic services, but does not include language to allow the therapist to supervise nursing service. The word supervision is key and referenced again.

42 CFR 484.18 (c) Standard: "Conformance with physician orders" states, "Drugs and treatments are administered by agency staff only as ordered by the physician. Verbal orders are put in writing, signed and dated with the date of receipt by the registered nurse or qualified therapist (as defined in Sec. 484.4 of this chapter) responsible for furnishing or supervising the ordered services. Verbal orders are only accepted by personnel authorized to do so by applicable State and Federal laws and regulations as well as by the HHA [Home Health Agency's] internal policies". The words "responsible for furnishing", or "supervising the ordered services", are the key language in answering the above question. Therapists do not furnish nursing service or supervise nursing service; therefore, they may not take nursing orders.

410 IAC Article 17-6-1: Scope of services. The therapist does not meet the standards of the registered nurse section and, therefore, may not take orders for skilled nursing care. They are not qualified to assess the patients' nursing needs or know if verbal orders are correct based on nursing standards of practice.

The above information was discussed and clarified at the National Surveyors Basic Home Health Training in Baltimore, Maryland, June 11-15, 2001, presented by the Central Office Home Health Regulatory Staff from the Department of Health and Human Services, Health Care Financing Administration (HCFA), (now known as Center for Medicare and Medicaid Services or CMS).

Is it incorrect to have both a Private Duty Plan of Care (485) and an Intermittent Plan of Care (485) when a patient is receiving both services simultaneously or must both services be incorporated into a single plan of care (485)?

The answer is contingent upon how the agency is legally set up and how they are licensed. Another issue that affects the answer is not knowing what the definitions are for private duty and intermittent in the question which was asked. Since it is unclear, the assumption is made that they are within the same agency under the same license of a Medicare/Medicaid federally certified and state license agency and are terms the agency has established for its different programs. If this is correct, then **ONE** plan of care is required per patient that includes all services of ALL programs that are covered under that license. Refer to the state home health rules, 410 IAC Article 17, and federal Conditions of Participation 42 CFR 484.18 (a) "Standard: Plan of care: The plan of care developed in consultation with the agency staff covers all pertinent diagnosis, including mental status, *types of services*...".

If Private Duty and Intermittent are separate and **each has a separate license**, then the rules or regulations for that type of agency would apply. For example, a state licensed only agency would follow 410 IAC Article 17, Rule 5, Home Health Patient Care, Sec. 1. (a) (1), "The medical plan of care shall be developed...". A federally certified agency would follow the state rules identified above and 42 CFR 484.18 (a), "Standard: Plan of care: The plan of care developed in consultation with the agency staff covers all pertinent diagnosis, including mental status, *types of services*...".

What are the supervisory requirements and physician order requirements for home health aide only cases if you are a state only agency?

Physician orders: The state allows a medical plan of care that requires orders and a non-medical plan of care that does not require orders. The non-medical plan of care is for home health aide only; thus, the agency does not need orders for a home health aide only case.

Supervision: If a patient requires a *medical plan of care*, a registered nurse, or appropriate professional staff member (if other services are provided), must make the initial visit to the patient's residence and make a supervisory visit at least every two (2) weeks, either when the home health aide is present or absent to observe the care, to assess relationships, and to determine whether goals are being met. For those *not requiring a medical plan of care*, supervisory visits or conferences shall be held as often as the condition of the patient and family situation require but at least every two (2) weeks. Every other supervisory visit or conference shall be a home visit.

What are the supervisory requirements and physician order requirements for home health aide only if you are a federal and state agency?

The agency must meet both federal regulations and state rules.

Physician orders: The agency is required to have orders for home health aide only care. Federal regulations do not address anything but a medical plan of care. Orders would be required for personal care attendants as well. The definition of Medical Plan of Care according to state is found at 410 IAC 17-1.1-13, "Medical Plan of Care", and means "written instructions signed by the physician for the provision of care of treatment given by a registered nurse, physical or occupational therapist, speech pathologist, medical social worker, or a home health aide to a patient in the home".

Supervisory visits: The professional must make an onsite visit to the patient's home no less frequently than every 2 weeks for patients that receive skilled service. The registered nurse must make a supervisory visit to the patient's home no less frequently than every 60 days for home health aide services only. However, the agency must also meet the state requirements, which are more stringent. State rules require a registered nurse, or appropriate professional staff member (if other services are provided) to make the initial visit to the patient's residence and make a supervisory visit at least every two (2) weeks, either when the home health aide is present or absent, to observe the care, to assess relationships, and to determine whether goals are being met if a patient requires a *medical plan of care*.

Side note: Organizations are set up differently or may have a separate license for private pay patients. When in doubt, the agency needs to seek legal advice or identify the rule or regulation, and may impose a more stringent standard. The agency would be obligated to follow the strictest standard.



Renewal of Licensure Applications

A license is required to operate any Hospice and/or Home Health Agency providing care in Indiana. The application and correct licensure fee must be completed and received timely by the Indiana State Department of Health (ISDH) from the provider before a renewal license can be issued. To avoid delays in processing your license renewal application, ensure that the application is completed fully and accurately, and is signed by the appropriate authorized representative of the license. If there is a change in staff/personnel, please submit the following documentation along with the completed renewal application.

Home Health Agency

Administrator

- Current Valid Indiana RN/MD License (if applicable)
- Current Limited Criminal History Check
- Current Resume

Alternate Administrator

- Current Valid Indiana RN/MD License (if applicable)
- Current Limited Criminal History Check
- Current Resume

Nursing Supervisor

- Current Valid Indiana RN License
- Current Limited Criminal History
- Current resume with one yr exp

Alternate Nursing Supervisor

- Current Valid Indiana RN License
- Current Limited Criminal History
- Current resume with one yr exp

Hospice

Medical Director

- Current Valid MD or Indiana License

Patient Family Coordinator

- Name of Personnel

Administrator

- Name of Personnel

Please submit your license application and fee to:
Indiana State Department of Health
Cashiers 2-C
2 North Meridian Street

HCFA-855 Procedural Changes

The Centers for Medicare and Medicaid Services (CMS) has announced that it is implementing new HCFA-855 application procedures, effective November 1, 2001.

The new version CMS-855A Medicare Provider/Supplier Enrollment Application will replace the HCFA-855 and HCFA-855C currently in use. The HCFA-855C will be discontinued.

The processing and the distribution of the CMS-855A forms will change. Applicants will no longer contact the Indiana State Department of Health (ISDH) to obtain the HCFA-855 for initial and change of ownership applications. The applicant then returns the completed HCFA-855 to ISDH, who then forwards to the appropriate fiscal intermediary. In the new procedure, applicants will contact the fiscal intermediary directly to obtain the CMS-855A, and then the applicant will submit the CMS-855A directly to the appropriate fiscal intermediary.

CMS encourages applicants/providers to access a list of fiscal intermediaries listed by state and specialty at:

www.hfca.gov/medicare/enrollment/contacts

The Department will continue to forward any HCFA-855 and CMS-855A forms received to the appropriate fiscal intermediary for processing. However, after a sixty (60) day transition period, Centers of Medicare and Medicaid Services (CMS) has instructed ISDH to return to applicant any HCFA-855 and CMS-855A applications received. All change requests as of December 31, 2001 must be submitted on the appropriate CMS-855A forms.

Questions regarding distribution, processing and the completion of

Frequent Regulation Questions & Answers (continued from previous page)

May a Home Health Aide apply Lantispetic cream or medication to wound?

Current rules do not address home health aides applying or assisting with medication. The home health aide may not apply a prescription or nonprescription medication to any open area or wound. Application of medications is not within the scope of their duties. Presently "open area" is the KEY word. Another key issue is that a home health aide may not introduce the medication into any orifice or touch the medication directly.

The home health aide must be competency tested for any procedure prior to its performance. Every medication with which the aide assists needs to be addressed in the competency testing. A home health agency would need to have documentation in the home health aide personnel record demonstrating the training and/or competency for each medication. Refer to 410 IAC Article 17-6-1, Scope of Services; (13) "any other tasks that the home health agency may choose to have the home health aide perform". Also refer to 42 CFR 484.36 and federal tag G206 (xiii) and State tags, N212, G211 and N202.

Does the regulation permit for me to "share" a branch manager between two locations as long as they are readily accessible by pager, cell phone and within less than an hour travel time or is it necessary to have a delegated branch manager at each location?

The administrator's duties are defined under 410 IAC Article 17, Rule 4, Sec. 1, Home health agency administration and management.

We never received a written confirmation or acceptance of the action plan that we submitted following our July survey. If we did I apologize for asking, but we do not recall having received anything in writing.

ISDH does not respond in writing for acceptable Plans of Correction, only deficient ones. The surveyor will conduct a follow up survey after an acceptable plan of correction has been submitted.

Is there any regulation (state or federal) that would prevent our hiring? An OT who hasn't sat for his/her exam yet? This individual has graduated from an accredited program and will probably sit for his/her exam in March 2002. We have made arrangements for this individual to have daily face-to-face supervision/contact with an OTR. We need to know this answer as soon as possible due to making hiring decisions.

Refer to 410 IAC Article 17-1.1-10 where "Health care professional" is defined. 410 IAC 17-1.1-15 and 17-1.1-16 addresses the OT as an occupational therapist or an occupational therapist assistant certified under IC 25-23.5. This is in reference to the Health Professions Bureau (HPB) regulations for occupational therapists. ISDH does not advise on HPB rules. ISDH will only make referrals for non-compliance. Also see 410 IAC 17-6-1, Scope of Services, Sec. 1 (a)(2) and (b). Refer to federal regulations also if this applies to your agency.

How to Report a Complaint Related to Allegations of Registered Home Health Aide Abuse, Neglect, or Misappropriation of Patient Property

The Acute Care Division of Indiana State Department of Health is committed to being attentive to any concerns about inappropriate behavior of registered home health aides (RHHA) in Indiana that could be perceived as abuse or neglect of home health clients or that involved misappropriation of patient property (see next column for definitions).

We encourage family members and employees to initially alert the home health agency (HHA) administration of your concerns. This will provide the agency an opportunity to internally address and correct concerns immediately.

If you have done this and feel that further investigation is needed, we recommend a written complaint be prepared and mailed to:

**Acute Care Division
Indiana State Department of Health**

**2 North Meridian Street, 4-A
Indianapolis, Indiana 46204**

It is recommended that the written complaint includes the following information:

- ✎ Name, address, and telephone number of complainant, unless the complainant is anonymous.
- ✎ Name, address, and telephone number of the patient involved in the complaint.
- ✎ Name of RHHA and any other information that may be helpful in identifying the RHHA.
- ✎ Name and telephone of RHHA's employer.
- ✎ Name, address, and telephone of any witnesses.
- ✎ Action, if any, taken by RHHA employer to discipline the RHHA and to protect the patient.
- ✎ Involvement of any law enforcement agencies, including local police, prosecutors, Attorney General or Adult Protective Services.
- ✎ Statement of facts about the allegation that includes date, time, location, and narration of events.

Names of complainants and all information related to current investigations will be treated on a confidential basis.

**Further information about
this process can be
obtained by calling
317.233.7541**



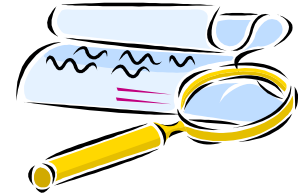
Summary of the Home Health Aide Investigation process

Under Indiana Code 16-27-1.5, ISDH staff must investigate any allegation related to the following definitions:

Abuse means the willful infliction of injury, unreasonable confinement, intimidation, or punishment resulting in physical harm, pain, or mental anguish.

Misappropriation of patient property means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of patient's belonging or money without the patient's consent.

Neglect means failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.



After a complaint is filed, the following ISDH actions will occur
Notification

ISDH staff will notify all home health agencies that have previously registered the RHHA and the RHHA that an allegation has been received.

Fact Finding/Investigations

ISDH staff may request the complainant and the RHHA's employer to provide additional information about the incidence and agency records and policies. Based on this information, ISDH staff may request additional written information and may conduct

telephone interviews of the RHHA, agency personnel, and law enforcement officials. All information containing summaries of the interviews and written documentation will be placed into a confidential file.

Independent Legal Review

Upon completion of the investigation, a copy of the complete file shall be referred to the contract legal investigator for review. That individual may collect additional information and conduct more interviews. That individual will determine if there is sufficient evidence to make a preliminary determination of a Finding of Abuse/Neglect, or Misappropriation. That recommendation will be forwarded to the Office of Legal Affairs.

Preliminary Determination of a Finding of Abuse/Neglect or Misappropriation

After a final legal review, the Director will notify all parties that (a) there was insufficient evidence to support a finding, or (b) notify the RHHA that a preliminary finding has been made by the Department. In the latter case, the aide will be offered the opportunity of a written request for a hearing, and later appeal.

Findings

When the finding is final, the finding will be placed on registry, and all parties will be notified that federal and state law prohibits an licensed health care entity from employing this RHHA as a nurse aide or home health aide.

This section is for certified agencies using OASIS. In the last year, more than 150,000 reports have been received by more than 170 home health agencies. Below are responses to recent questions.

**If you have any questions,
please contact the ISDH help desk at:**

Clinical Help Desk:	317.233.7485
Technical Help Desk:	317.233.7206

OASIS Coding Practices

At long last, CMS has finalized the coding guidelines for HHAs to use under PPS. The document can be accessed on the CMS web site at: www.hcfa.gov/medicare/hhmain.htm.

It is found under Home Health Prospective Payment System Policy Issues and Regulations and is called:

"Correct Diagnosis Coding Practices" - September 26, 2001: Text Version and Adobe Acrobat PDF Version

The purpose of this document is to assist home health agencies in understanding correct diagnosis coding practices for Medicare home health. The materials are in three sections:

- (1) information on general coding principles, with discussion of coding issues pertinent to home health,
- (2) case scenarios for illustration, and
- (3) Frequently Asked Questions (FAQs) on diagnosis coding.

Questions about specific cases agencies encounter in their clinical practice should be referred to the agency's Medicare fiscal intermediary or national/local coding authorities such as the American Health Information Management Association (AHIMA).

Note: Source materials for this document include the following:

- (1) Medicare Home Health Manual, or HIM-11, including billing instructions and instructions for completing the HCFA-485, Plan of Care (for information about obtaining a manual: www.hcfa.gov/pubforms/p2192ch1.htm);
- (2) OASIS User's Manual, Chapter 8 (available via <http://www.hcfa.gov/medicaid/oasis/usermanu.htm#impmanual>);
- (3) the ICD-9-CM manual and official coding guidelines, available from commercial sources and from the U.S. Centers for Disease Control (for the manual: www.cdc.gov/nchs/products/catalogs/subject/icd/icd96ed.htm; for official coding guidelines: www.cdc.gov/nchs/data/icdguide.pdf).



Home Health Agency Consumer Reports

Over the past eight months, providers and state agencies have requested that ISDH develop web-based reports on home health agencies. These groups wanted ISDH to create reports that meet two goals:

SERVICE AVAILABILITY

Inform consumers which agencies serve a specific county and how to contact the Council of Aging

COMPLIANCE HISTORY

Provide the consumer a three-year history for each agency's compliance with state or federal laws and rules.

This work is now completed with plans to post in December 2001. A sample report of your agency's results is attached for your review.

Service Availability

The proposed web site is designed around a map of Indiana. Clicking on the county of interest will display a list of agencies that have reported to ISDH to serve that county.



Each report will display the agency name and address and full-time-equivalents and whether the agency accepts Medicare and Medicaid. The report will inform consumers of which services are offered by the agency and if there was a recent change in administrators.

Compliance History

Towards the end of each report, ISDH staff wanted to display a numeric count of the number of state deficiencies, federal citations, and number of substantiated complaints. These counts would not appear for two months after the survey was completed.

This delay will ensure all survey results are final.

It is estimated that 60 percent of the reports will acknowledge that the agency has not received a citation in the past three years, or received a complaint that was verified and substantiated.

Telephone Directory by Topic

Plans of Correction Survey Process

Lana Richmond 317.233.7742

Provider Changes, Licensure, Initial Application, & Closures

Darlene Earls 317.233.7302

OASIS Technical Help Desk

317.233.7203

Data Reporting & Aide Registry

Tom Reed 317.233.7541

We're on the Web!
www.IN.gov/isdh

Information on ISDH Web Site

- ◆ Directory (with quarterly updates)
- ◆ Laws/Rules/Regulations (USA & IN)
- ◆ Licensing Form
- ◆ Reports
- ◆ Links to QA organizations

www.IN.gov/isdh/regsvcs/providers.htm

The Home Health &
Hospice Newsletter
is published by the
Indiana State Department of Health
Division of Acute Care
2 North Meridian Street
Indianapolis, IN
46204-3006

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